

Service Date: April 23, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of	)	UTILITY DIVISION
MONTANA POWER COMPANY for Approval	)	
of its Electric Utility Restructuring Transition Plan	)	DOCKET NO. D97.7.90
Filed Pursuant to Senate Bill 390.	)	ORDER NO. 5986c

**ORDER DENYING MOTION FOR RECONSIDERATION**

Introduction

1. On April 20, 1998, Montana Power Company (MPC) filed its Motion for Reconsideration in which MPC disagreed with the Commission's Notice of Commission Action Clarifying Public Notice issued April 17, 1998, on the grounds of (1) alleged due process violations; and (2) the Commission's alleged failure to consider verifiable costs during the "Interim Sale Period." In clarifying what would be heard in Tiers 1 and 2, the Commission, according to MPC, denied MPC its fundamental due process and an opportunity for a hearing.

Background

2. On April 6, 1998, the Montana Public Service Commission (Commission) issued its Notice of Public Hearing on the application of Montana Power Company (MPC) for approval of its Electric Utility Restructuring Transition Plan, filed pursuant to Title 69, Chapter 8, Montana Code Annotated (MCA). The Commission issued a short and plain statement of matters to be heard beginning April 28, 1998 on the first of two hearings (Tier 1 and Tier 2) scheduled on MPC's Transition Plan, pursuant to the Montana Administrative Procedures Act (MAPA), § 2-4-601, et seq.

3. In delineating the Tier 1 and Tier 2 issues, the Commission's Notice outlined the Tier 1 issues for hearing beginning April 28, 1998, including MPC's presentation of its plan for large customer choice beginning July 1, 1998; an accounting order to track costs stranded during the period before the Commission's Final Order on stranded costs; customer education and protection, including functional separation, unbundled bills and rate design; pilot programs; and

methods to choose electricity suppliers. The Commission stated that after the results of the competitive bid sale of MPC's generation are known, the Commission will notice and conduct a later hearing (Tier 2) on transition costs, market power, universal system benefits charge, revenue requirements, and the competitive bid sale of MPC's generation assets.

4. On or about April 8, 1998, MPC advised the Commission that MPC intended to file a request for clarification of the scope of hearing as stated in the Notice. Late on April 13, 1998, MPC filed a Motion for Clarification. MPC made the following three points criticizing the Commission's Notice of Public Hearing:

(A) For the time period from July 1, 1998 to the final closing of the sale, MPC stated that it requested an accounting order and tracking mechanism for the hydro-thermal assets. In addition, however, MPC stated that it requested interim transition cost recovery for its regulatory assets and qualifying facility contracts. As proposed by MPC, customers leaving on July 1, 1998 would pay these interim transition costs. For clarification, MPC maintained that the Notice of Public Hearing should be amended to reflect MPC's request for this interim recovery.

(B) MPC asked for clarification on the Commission's statement that it will conduct a later hearing on the universal system benefit charge. As of July 1, 1998, MPC pointed out that universal system benefit charges will appear on customer bills. MPC maintained that the hearing on April 28, 1998, therefore, should address universal system benefit charges.

(C) Finally, MPC expressed uncertainty on what the Commission intended to analyze regarding revenue requirements at the first and second hearings. In his testimony, Mr. Phil Maxwell used MPC's revenue requirements to arrive at cost allocations. MPC maintained that the Commission should clarify what it expects the parties to discuss regarding revenue requirements in the first hearing.

5. At its work session on April 14, 1998, the Commission acted on MPC's Motion. The Commission staff attempted, with difficulty, to serve the Notice of Commission Action by electronic list-server and individual electronic mail to MPC and Intervenors on April 15 and 16, 1998. MPC personnel attended the work session on April 14, 1998, and MPC's attorney conferred with the Commission on its clarification on April 15 and 16, 1998.

6. On April 17, 1998, the Commission successfully served the Notice of Commission Action Clarifying Public Notice with the following dispositions:

(A) Request for interim transition cost recovery. The Commission denied MPC's position that a request for Competitive Transition Charges is appropriate as a first tier issue at the hearing beginning April 28, 1998. The Commission determined that § 69-8-211, MCA precludes recovery of transition costs before the transition costs are known and measurable, based on an affirmative showing by the public utility of all reasonable mitigation of costs. Before granting transition costs, the value of all generation assets, liabilities and supply-related costs must be reasonably demonstrable and considered on a net basis.

The Commission stated that under § 69-8-211, MCA, it must make a final approval of transition costs before the utility may recover these costs through a competitive transition charge. Therefore, the Commission could not hear in the Tier 1 proceeding a request that the Commission authorize any transition charge, "interim" or otherwise. MPC can demonstrate the values of the assets and the mitigation efforts at the second tier hearing after the sale values are known. In its final order, the Commission can consider and determine the values of all generation assets, liabilities and supply-related costs for the Commission's consideration on a net basis. The two-tier hearing approach from the beginning anticipated accounting order proposals to track those costs for customers entitled to and exercising choice on July 1, 1998. The Commission on clarification stated that with this process MPC should be held harmless, pending the final determination of transition costs.

(B) and (C). The Commission directed Staff to address the Universal System Benefits Charges (USBC) with the parties in the Prehearing Procedural Conference held telephonically on April 17, 1998, beginning at 10:00 a.m. The Commission indicated that Parties may discuss which, if any, portions of the USBC issues may be presented in the first tier hearing, in particular to satisfy the unbundling on the bills and continuation of the existing low-income program. The Commission also determined that MPC may use Phil Maxwell's testimony regarding revenue requirements to arrive at cost allocations in the first tier hearing.

7. On April 17, 1998, the Commission Staff, following a Notice of Prehearing Procedural Conference, convened a telephonic procedural conference. The Intervenors, MPC

and Staff addressed the issue of the Commission's clarification related to the universal systems benefits charge and the request for recovery of transition costs during the interim period, among other procedural matters. On the universal systems benefits program, parties reached agreement on what limited information witnesses would present in Tier 1, with parties agreeing to propose an abbreviated hearing on this issue only sometime in September before the Tier 2 hearing.

8. At the prehearing conference, MPC notified the Intervenors and Staff of its intention to file a Motion for Reconsideration of the Commission's Action clarifying the Commission's Notice of Public Hearing. Parties were informed that there should be a fast turn-around of the Motion and Responses, with a work session continuing day to day during the week of April 20, 1998, to address the matter. Parties indicated that they would try to address the issue in time for input on the Prehearing Memoranda due April 23, 1998 on the first tier witnesses, issues and discovery, with a proposal for procedural schedule of the second tier issues.

9. At 4:34 p.m. on April 20, 1998, MPC filed its Motion for Reconsideration by facsimile (fax) and served the electronic list server at some point thereafter.

10. MPC's Motion for Reconsideration. MPC disagreed with the Commission's clarification on the grounds of (1) alleged due process violations; and (2) the Commission's alleged failure to consider verifiable costs during the "Interim Sale Period." In clarifying what would be heard in Tiers 1 and 2, the Commission, according to MPC, denied MPC its fundamental due process and an opportunity for a hearing.

11. MPC further maintained that the Commission in its clarification did not consider the following: (a) MPC would incur verifiable costs during the Interim Sale Period that it should be able to recover from customers who leave MPC's system on July 1, 1998; and (b) Senate Bill 390 (Title 69, Chapter 8, MCA) does not address the timing of a sale *vis a vis* the July 1, 1998 deadline, "because the statute doesn't require a '[p]ublic utility to divest itself of any generation asset or prohibit a public utility from divesting itself voluntarily of any generation assets.'" MPC concluded that a generation sale could happen years later, and the "result would have to be factored into the CTC recovery that had been in place in the meantime." (Quotes from MPC's Motion, page 4.)

12. In conclusion, MPC requested that the Commission "reverse" its decision and allow MPC to present evidence regarding the transition costs MPC will incur during the Interim Sales Period. MPC requested that it be allowed to present the evidence in the alternative: (1) the ability to collect these costs during the Interim Sale Period; or (2) the accumulation of these costs in an appropriate accounting order. MPC preferred the first alternative.

13. Intervenor Large Customer Group (LCG) filed a Response to MPC's Motion for Reconsideration on April 22, 1998. LCG stated that (1) MPC concedes that an accounting order can fairly protect the company; (2) The Commission's interpretation of Senate Bill 390 is correct; and (3) MPC has not demonstrated any injury from its delayed sale. LCG asserted that MPC is assured a fair opportunity to make its case for recovery of transition costs in the Tier 2 proceeding. Further, the Commission is allowing MPC to present evidence in support of its idea of an appropriate accounting order in the Tier 1 proceeding. Due process does not require that the Commission agree with MPC's interpretation that Senate Bill 390 allows CTCs for the interim or that MPC be granted its preferred relief. LCG and the other Intervenor disagree that MPC is entitled to all transition costs it claims. As a contested case proceeding, the parties will have their opportunities, as well, to present their proposals.

#### Discussion and Findings

14. MPC asserts that it is "seeking the recovery of costs that customers who leave MPC's system on July 1 will avoid paying if CTCs are not assessed." MPC Motion for Reconsideration, page 4, lines 12-14. The Commission determines that MPC will not be harmed as it alleges, because the large customers will be properly assessed their share of costs in the Commission's final order on transition costs after the Tier 2 proceeding. In granting MPC's second alternative, i.e., the ability to present an appropriate accounting order to track and accumulate costs incurred during the Interim Sales Period, the Commission has afforded MPC full protection and due process. The Commission stated in its clarification that the two-tier hearing approach anticipated accounting order proposals to track costs for customers entitled to and exercising choice on July 1, 1998. The Commission found that this procedural delineation between tiers, with the final accounting to occur in the second tier, should hold MPC harmless, pending the final determination of transition costs.

15. As a matter of law the Commission cannot conduct a hearing on a request to collect transition costs during the "Interim Sale Period," at least not during the period of time preceding the Commission's final order on the transition plan, using the results of the competitive bid sale for valuation. Section 69-8-211(1), MCA, provides that the Commission shall allow recovery of (a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation; (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that can be accounted for up to the effective date of the Commission's final order on the transition plan; (c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts; and (d) other transition costs that may qualify under Title 69, Section 8, MCA.

16. Section 69-8-211(2), MCA, provides that transition costs, as determined by the Commission, on an affirmative showing by the utility, must reflect all reasonable mitigation; and the value of all generation-related assets and liabilities and electrical supply costs must be reasonably demonstrable and must be considered on a net basis (valuation methods include a competitive bid sale to determine value). Section 69-8-211(3)(a), MCA, further provides that "on Commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge."

17. MPC knew that the procedure to address MPC's transition plan was bifurcated into two tiers after it announced in December 1997 that it would sell its generation assets. The Commission stated from the beginning in the amendment to the procedural order issued January 7, 1998, that in the second tier it would hear the issue of transition costs, once those costs could be determined following a successful competitive bid process, although the sale itself might not be completed. Contrary to MPC's claims, the Commission has provided a fair procedure to address transition costs between the time of the order and when the sale is complete. The Commission has adopted a fair procedure to address all the issues in the Docket. MPC appears to confuse tracking the costs incurred during this period of time with actual collection of transition costs. The law does not allow the Commission to impose a transition charge before the final order in the second tier. The law does allow the utility to recover the unmitigable costs of

energy supply-related regulatory assets and deferred charges that can be accounted for up to the effective date of the Commission's final order on the transition plan. § 69-8-211(1)(b), MCA.

18. The Commission's response to MPC's Motion for Clarification was not a summary ruling absent due process protections, but rather an explanation (clarification) of the two-tier proceeding which affords full opportunity for MPC to present its case. The Commission will address here an ambiguity in MPC's Motion for Reconsideration that should be clarified as well (page 4, lines 21-24). MPC states "Therefore, a generation sale could happen any time after July 1, 1998, even years later, at which time its result would have to be factored into the CTC recovery that had been in place in the meantime." (Emphasis supplied.) The Commission interprets Senate Bill 390 as requiring the Commission to set the competitive transition charges (CTC) in its final order. Parties may address the issue at a later time whether the Commission has ongoing authority for years to make adjustments to the CTCs. This position appears to be contrary to the intent of the legislation. Section 69-8-211(5), MCA, provides that the Commission's approval of transition costs and collection through transition charges is a final settlement. See also, § 69-8-403, MCA.

19. In its clarification to MPC, the Commission stated that MPC should be held harmless because it may propose an accounting order mechanism to account for claimed transition costs. The Commission will allow MPC to make a limited presentation of its position, for purposes of proposing its accounting order.

#### Conclusions of Law

1. The Commission exercises authority over public utilities and the electric utility industry restructuring pursuant to its authority under Title 69, particularly Chapters 3 and 8, MCA. MPC is a public utility subject to the Commission's jurisdiction and authority. The Intervenor in the contested case proceeding likewise are subject to the Commission's authority, including the authority to set the procedural schedule, hold the contested case proceeding, and determine the procedural issues to address in Tiers 1 and 2 of this proceeding. Title 69, Chapter 8, MCA.

#### Order

WHEREFORE, the Commission denies MPC's Motion for Reconsideration of the Commission's April 17, 1998 Notice of Clarification, based on its April 14, 1998 action. MPC may propose an accounting order mechanism and make a limited presentation to support its proposal in the Tier 1 proceeding beginning April 28, 1998. MPC shall have the full opportunity to present its case for transition costs in the Tier 2 proceeding.

Done and dated this 22nd day of April, 1998 by a vote of 5-0.



BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)